



September 18, 2002

**VIA ELECTRONIC FILING**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

**Re: Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. Section 160(c); CC Docket No. 01-338**

Dear Ms. Dortch:

Attached are reply comments of the Association for Local Telecommunications Services ("ALTS") for filing in the above-captioned proceeding.

Sincerely,

/s/

Teresa K. Gaugler

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition for Forbearance of the Verizon	)	CC Docket No. 01-338
Telephone Companies Pursuant to 47 U.S.C.	)	
Section 160(c); WC Docket No. 01-338	)	

**REPLY COMMENTS OF THE  
ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES**

The Association for Local Telecommunications Services (“ALTS”) hereby files its reply comments in the above-referenced proceeding in response to the Commission’s Public Notice<sup>1</sup> regarding Verizon’s Petition for Forbearance of certain checklist items in Section 271.<sup>2</sup>

ALTS urges the Commission to dismiss this Petition because it is premature and clearly does not meet the legal requirements or policy justifications for forbearance under Section 10. As several commenters explain, Section 10 requires a factual analysis, which cannot be undertaken before the Commission decides whether to remove certain network elements from the mandatory unbundling list, thus there is not an adequate record for the Commission to review this Petition.<sup>3</sup> Furthermore, granting the Petition would harm consumers and undermine growing competition by allowing the Bell Operating Companies (“BOCs”) to provide in-region long distance services before they fully open their local markets to competition. The BOCs already balk at complying with the Act and providing access to unbundled elements even with the possible reward of gaining authority to provide long distance services. If they are allowed

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<sup>1</sup> *Public Notice*, CC Docket No. 01-338, DA 02-1884 (August 1, 2002).

<sup>2</sup> *Petition for Forbearance of Verizon*, CC Docket No. 01-338 (filed July 29, 2002) (“*Verizon Petition*.”)

<sup>3</sup> PacWest Comments at 9-10; Sprint Comments at 4-7.

to obtain that reward without fully opening their local markets, competition will flounder helplessly.

In its Petition, Verizon argues that “if a network element does not meet the Section 251(d)(2) standard for mandatory unbundling, the [Commission] should deem the corresponding Section 271 checklist item satisfied....”<sup>4</sup> Despite Verizon’s attempted justifications throughout the Petition, the only “corresponding” checklist item to which Verizon could appropriately be referring is item 2, which requires BOCs to provide access to network elements in compliance with Sections 251(c)(3) and 251(d)(2), because it is the only checklist item that directly refers to Section 251(c)(3) or 251(d)(2) requirements. Items 4, 5, 6 and 10, on the other hand, contain no language referring to Section 251 and could not properly be considered “corresponding” checklist items – each of those items is an independent requirement unrelated to and unaffected by any Commission decision regarding Section 251(c)(3) unbundling requirements.<sup>5</sup> Thus, the basis for Verizon’s argument that items 4 through 6 and 10 should be automatically removed from the 271 checklist if those same network elements are removed from the 251 mandatory unbundling list is erroneous.

By arguing that removal of elements from the Section 251 unbundling list satisfies Section 271, Verizon must believe that assessing a BOC’s initial compliance with the unbundling requirements is also the final analysis in determining BOC overall compliance with Section 271. On the contrary, however, if Congress intended for the checklist items to cease to apply after 271 authority was granted, it would not have included enforcement provisions

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<sup>4</sup> *Verizon Petition* at 1.

<sup>5</sup> *See PacWest Comments* at 4.

directing the Commission to impose penalties or revoke approval if those items were not meet any time *after* authority had been granted.<sup>6</sup> To monitor the BOC's ongoing performance after authority is granted, the Commission requires a BOC to submit a Performance Assurance Plan with its 271 application and to continue reporting its performance after it obtains authority. Through this reporting requirement, the Commission hopes to curb any backsliding by a BOC once it begins to provide long distance services. Forbearing from applying certain checklist items in Section 271 would be the antithesis of these backsliding provisions and would render them meaningless.

Although Verizon argues that Sections 251 and 271 would conflict if the Commission does not grant the relief it seeks,<sup>7</sup> several commenters explain that no conflict exists because each section imposes duties on a different subset of local exchange carriers ("LECs").<sup>8</sup> Section 251(b) applies to *all* LECs, Section 251(c) applies to all *incumbent* LECs, and Section 271 applies to all *BOCs* seeking authority to provide in-region interLATA services. Furthermore, Congress clearly intended for the BOCs to be subjected to more stringent requirements than Section 251 alone in order to obtain 271 authority. Otherwise, Section 271 would merely state that a BOC must satisfy Section 251 without providing further details. It is not that brief, however, and the Commission must interpret the Act by giving independent meaning to each of the checklist items in Section 271 or else that language would be superfluous.<sup>9</sup> Thus,

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<sup>6</sup> 47 USC § 271(d)(6).

<sup>7</sup> *Verizon Petition* at 6.

<sup>8</sup> PacWest Comments at 2-3; Sprint Comments at 9.

<sup>9</sup> AT&T Comments at 7.

regardless of whether checklist items 4 through 6 and 10 involve some of the same network elements that may be removed from the 251 mandatory unbundling list, the BOCs must continue to unbundle them in order to satisfy Section 271 and receive authority to provide in-region long distance services. The Commission has already reached this obvious conclusion and has reviewed 271 applications by analyzing each individual checklist item, even though unbundling of the same element may no longer be required under Section 251(c).<sup>10</sup> Verizon has provided no compelling argument for the Commission to change its position or its review of 271 applications.

Verizon alternatively asserts that the Commission may forbear from applying the requirements of Section 271 “if the Commission prefers to act through forbearance rather than through an interpretation of Section 271.”<sup>11</sup> However, such an audacious suggestion utterly disregards the language of Section 10(d), which states that “the Commission may *not* forbear from applying the requirements of section 251(c) or 271 ... until it determines that those requirements have been fully implemented.”<sup>12</sup> That statutory language could not be more unambiguous – the Commission may not forbear from applying Section 271 until it has been fully implemented. Merely removing certain network elements from the mandatory unbundling list under Section 251 (if the Commission chooses to do so) does not “implement” Section 271. To suggest that the Commission simply ignore subsection (d) highlights Verizon’s (and the other BOCs’) contempt for the Telecom Act as they continue to flout its clear language and

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<sup>10</sup> See PacWest Comments at 4-5; Sprint Comments at 14.

<sup>11</sup> *Verizon Petition* at 2.

<sup>12</sup> 47 USC §160(d) (*emphasis added*).

intentions.

Verizon goes one step further and firmly asserts that forbearance “is *required* by Section 10” when an element is removed from the unbundling list.<sup>13</sup> Such a statement is outrageous. Section 10 requires a much broader analysis than Section 251(d)(2) with a review of the market as a whole, rather than simply the impact of unbundling on the ILECs and CLECs. Just because an element may not meet the necessary and impair test under Section 251(d)(2) does not mean that forbearing from requiring that element to be unbundled is in the public interest and would promote competitive market conditions. Verizon continues to tout assertions that unbundling requirements create disincentives for investment and facilities-based competition;<sup>14</sup> however, this argument was debunked quite readily by the Supreme Court, which found that the unbundling requirements had not deterred ILECs or CLECs from investing in facilities.<sup>15</sup> Interestingly, Verizon cites its own comments and replies to support its proposition, but neglects to include a citation to its own appeal before the Supreme Court in which the Court rejected that proposition.<sup>16</sup>

Even if the Commission had “ample statutory authority”<sup>17</sup> (as Verizon claims) to forbear from applying checklist items 4 through 6 and 10, such an action would not be in the public interest. The fact that a carrier may have alternative sources for certain elements such that those elements do not meet the requirements of Section 251(d)(2) does not ensure that a fully

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<sup>13</sup> *Verizon Petition* at 3 (emphasis added).

<sup>14</sup> *Id.* at 5-6.

<sup>15</sup> *Verizon Comms Inc. v. FCC*, 122 S.Ct. 1646, 1675 (2002).

<sup>16</sup> *See Verizon Petition* at 6.

<sup>17</sup> *Id.* at 1.

competitive market exists “to discipline the ILEC”<sup>18</sup> (as Verizon claims). Moreover, it is clear from the many fines already levied on BOCs for noncompliance with the Act that the market has not adequately disciplined them *even after* they have obtained Section 271 approval under the current regime. Lessening those requirements would do nothing but erode competition and harm consumers, leaving them with a single unregulated monopoly provider.

### **CONCLUSION**

ALTS urges the Commission to reject Verizon’s Petition for Forbearance because it does not satisfy the legal requirements or policy justifications required under Section 10 and would undermine competition.

Respectfully Submitted,

**Association for Local  
Telecommunications Services**

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<sup>18</sup> See *Id.* at 5.